IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8355 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWASTIK TECHNOMECH PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

MR AK CLERK for Petitioner No. 1

MRS. SONAL VYAS, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 01/05/2002

ORAL JUDGEMENT

1. By this petition under Article 226 and 227 of the Constitution, the petitioner employer has challenged the order of the Assistant Commissioner of Labour, referring the industrial dispute of the respondent to the Labour Court at Ahmedabad. The dispute which is referred is as to whether the respondent should be reinstated on his original post with backwages.

2. The learned Counsel for the petitioner Mr. A.K.

Clerk vehemently argued and emphasised the contention that the respondent No.2 who is alleged to have raised the dispute, or on whose behalf the complaint was made to the Assistant Commissioner of Labour, was never employed by the petitioner, and therefore, there was no basis for the making of the reference. It was further contended that the sheer non-existence of any relationship between the petitioner and the respondent concerned was expressed in reply to the notice given to the trade union of which the respondent was alleged to be a member, and the same fact was placed on record before the Assistant Commissioner of Labour. Relying upon the proceedings before the Assistant Commissioner of Labour, it was further pointed out that the respondent concerned was not even physically remaining present before the authority and, therefore, at one stage he was asked to remain present. Thus, a case was emphatically sought to be made out that there was no material and no basis whatsoever before the appropriate Government to make the impugned order of reference. It was on that basis also contended that the petitioner was unnecessarily put to harassment and expenses by forcing a litigation against it in the peculiar facts and circumstances, and it was required to be relieved of the same by this Court since the Labour Court to whom the reference was made cannot decide upon the validity of the reference itself. In support of that argument, learned Counsel relied upon the judgement of the Supreme Court in National Engineering Industries Ltd. Vs. State of Rajasthan and ors., reported in 2000 (1) SCC 371 with particular emphasise also on the observations as under in paragraph 24.

"If there is no industrial dispute in existence or apprehended, the appropriate Government lacks power to make any reference".

3. The learned Counsel Mr. Clerk also relied upon the observations of the apex Court in Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and ors., reported in 2000 (2) SCC 455, which reliance appears to be misplaced in so far as the power of making a reference is discussed in that case in the context of delay in invoking that power.

4. The law on the subject is settled and summarised in the recent judgement of the apex Court in Secretary, Indian Tea Association Vs. Ajit Kumar Barat and ors., reported in 2000 (3) SCC 93, wherein paragraph 7 reads as under:-

"7. The law on the point may briefly be summarised as follows:-

1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

5. It is obvious from the reading of the above summary that the order of the appropriate Government making a reference is an administrative order and not a judicial or quasi-judicial one. Therefore, it cannot be closely canvassed to see whether there was any material before the Government to support its conclusion; and, it being an administrative order, it is based on subjective satisfaction of the Government. Applying this ratio in the facts of the present case, the appropriate Government appears to have been subjectively satisfied as regards existence of the dispute. And, in any case, the appropriate Government is not conferred with any power of taking evidence as regards the status or relationship of the parties to a dispute. In the nature of things and of necessity the order of reference in the scheme of

Industrial Dispute Act has to be based on prima-facie examination of some material or even lack of it. As elaborately stated by the Assistant Commissioner of Labour in the affidavit-in-reply, there was before the Assistant Commissioner, a complaint of the respondent and a letter of the petitioner stating that the workman had never worked with the petitioner. It is not for this Court to examine whether the material was sufficient to reach to any conclusion but once an opinion was formed and the impugned order was made, it has to be shown to have been outside the purview of the relevant provision for the challenge to succeed. As for the practical situation arising in exceptional case of reference of a dispute in which either the dispute is not genuine or the complainant is not a workman at all, suitable provisions are made under sub-section (7) of Section 11 of the I.D. Act. However, the alleged genuine difficulty arising in a given case cannot confer upon the appropriate government the power of taking or appreciating evidence.

6. It is held by the Supreme Court in Telco Convoy Drivers Mazdoor Sangh Vs. State of Bihar (1989-II-LLJ 558), that the formation of opinion as to whether an industrial dispute `exists or is apprehended' is not the same thing as to adjudicate the dispute itself on its merits and in performing the administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis. It is also observed by Their Lordships in the same judgement that "there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

7. The learned Counsel Mr. Clerk also relied upon the judgement of the Supreme Court in The Range Forest Officer Vs. S.T. Hadimani, reported in JT 2002 (2) SC 238 to emphasise the point that the burden of proving continuous service under an employer was upon the workman and applying the same principle the workman ought to have estabished by some cogent and reliable evidence before the authority making the reference that he had ever worked under the petitioner. However, as discussed earlier the taking of or appreciation of evidence is the

exercise which is entrusted to the forum adjudicating the dispute and that exercise has to be avoided by the appropriate Government.

8. In above view of the matter, no reason is made out to interfere with the impugned order of reference. Accordingly, the petition is liable to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

9. The learned Counsel Mr. Clerk at this stage submitted and requested that since the ad-interim relief of injunction against the operation and implementation of the impugned order and of staying further proceedings pursuant to the said order of reference was initially granted and has operated till now, the same interim relief may be continued for a further period of at least one month. It must be noted that the ad-interim relief appears to have been granted ex-parte and the same has not been confirmed at any stage afterwards and the petition was put up directly for final hearing. Even otherwise, admittedly, no immediate loss or difficulty in case of vacation of the interim relief could be pointed out. Therefore, the request for continuing the ad-interim relief is rejected.

(D.H.Waghela, J.)

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